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APPENDIX A.

OPINION OF SUPREME COURT OF ILLINOIS.

No. 40178.

In the Supreme Court of Illinois.

November Term, 1966.

City of East St. Louis,
Appellee,

vs.

Union Electric Company,
Appellant.

Opinion filed May 18, 1967—Rehearing denied September 27, 1967.

Mr. Justice Ward delivered the opinion of the court:

The plaintiff, the city of East St. Louis (hereafter called the City), filed suit for a declaratory judgment in the circuit court of St. Clair County and asked that the court declare that the defendant, Union Electric Company (hereafter called the Company), was obligated to the City under the terms of a franchise ordinance and did not have the right to deduct moneys paid to the City under a utility tax ordinance from monies otherwise due the City under the franchise ordinance.

The court entered judgment for the City. A constitutional question is concerned in this appeal by the Company.

On November 30, 1948, the city of East St. Louis passed ordinance No. 3193, the franchise ordinance. This ordinance granted to the defendant "* * * the right to construct, maintain and operate an electric distribution and transmission system in the streets, alleys and all other public places in the city of East St, Louis * * *." As consideration for the franchise to be granted, the ordinance provided that the Company would pay to the City $18,500 within five days after the ordinance became effective, and $25,000 for the year 1949. For the years 1950 through 1979 the ordinance provided that the Company would pay the City annually an amount by which "* * * 2% of the gross revenue up to but not in excess of $500,000.00 from the sale by Company in the preceding calendar year to all customers in the City of East St. Louis (except the City of East St. Louis and other municipalities, political subdivisions and municipal or governmental agencies) of electric energy for use in the City of East St. Louis; 1½% on the gross revenue from all such sales in excess of $500,000.00 and up to but not in excess of $1,000,000.00; 1% on the gross revenue from all such sales in excess of $1,000,000.00 and up to but not in excess of $1,500,000.00, and ½% on the gross revenue from all such sales in excess of $1,500,000.00, shall exceed the aggregate amount of all payments made by Company to the City of East St. Louis, or which accrued and for which Company became liable, during the preceding calendar year, for or on account of permit and inspection fees, or any other fees, licenses, charges, taxes or other exactions of whatsoever kind or character not in derogation of the rights, franchise, permission and authority hereby granted (except general taxes on tangible property) imposed by any valid ordinance of the City of East St. Louis."

On December 2, 1948, the Company filed with the City its written acceptance of the terms, provisions and conditions of the franchise ordinance. This formed a contract which by section 9 of the ordinance would be in effect until December 31, 1979.

Thereafter, the Company fully satisfied its liability under the terms of the franchise ordinance for each calendar year up to and including 1959. However, since 1960 the Company has not made any payments to the City pursuant to the franchise ordinance. The Company has denied that it has incurred any liability under the terms of the franchise ordinance since the enactment by the City of the utility tax ordinance (No. 3698) on June 15, 1960, pursuant to authority granted to the City by the legislature in section 8—11—2 of the Illinois Municipal Code (Ill. Rev. Stat. 1965, chap. 24, par. 8—11—2). This utility tax ordinance provides in pertinent part that a tax be imposed on all persons engaged in certain designated occupations or privileges, including "Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use consumption within the corporate limits of the City of East St. Louis, Illinois, and not for resale, at the rate of 4.48% of the gross receipts therefrom."

In addition, section 36 of the Public Utilities Act (Ill. Rev. Stat. 1965, chap. 111⅔, par. 36) provides in paragraph (a) that whenever a tax is imposed on a public utility by a municipality pursuant to section 8—11—2 of the Illinois Municipal Code, such utility may bill its customers "* * * an additional charge equal to the sum of (1) an amount equal to such municipal tax, or any part thereof, (2) 3% of such tax, or any part thereof, as the case may be, to cover cost of accounting, * * *." Paragraph (a) of the Act also requires that the additional charge be separately stated on the utility bill of each customer.

For the year 1960 and each subsequent year the Company has paid to the City the amounts due under the terms of the utility tax ordinance, and the Company has billed its customers a separate, additional charge equal to the utility tax required to be paid, plus 3 percent of such tax to cover accounting costs. The Company does not question the validity of the utility tax ordinance. However, the Company does contend that the payments it makes under the terms of the utility tax ordinance qualify under section 6 (B) (b) of the franchise ordinance as "* * * taxes * * * imposed by any valid ordinance of the City of East St. Louis," so as to permit such utility tax payments to be deducted from any liability the Company may have to the City under the franchise ordinance and this according to the express provisions of the franchise ordinance.

Thus, the Company argues that in 1960 and thereafter to date it has had no financial obligation to the City under the provisions of the franchise ordinance, because its payments pursuant to the utility tax ordinance for these years have exceeded the total of the concerned percentages of the Company's gross revenues from the sale of electric energy calculated under section 6 (B) (a) of the franchise ordinance. The Company argues that the language of the franchise ordinance in expressing the intent of the parties is clear and does not require construction. Further, the Company contends that section 3 of the utility tax ordinance unconstitutionally impairs the Company's contract with the City under the franchise ordinance by providing that such utility tax "* * * shall be in addition to the payment of money, * * * as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon, or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayers' business."

The City argues that the payments made to it by the Company under the utility tax ordinance are not "taxes" within the intendment of section 6 (B) (b) of the franchise ordinance. The rationale of this position is that the utility tax is in reality an assessment against the electrical consumers and not against the Company, since the charge is authorized to be made against the consumers, the charge is in fact made against and actually paid by the consumers, and the Company receives and retains 3% of the tax monies received to cover its costs of collection.

Basically, these arguments were addressed to the trial court by the City and the Company. The court ruled for the City on the basis of the intent of the parties as expressed in the franchise ordinance. The court *inter alia* observed that there was no dispute that the utility tax was passed on to its consumers by the Company and that the additional charge it imposed on its consumers was sufficient to cover its accounting expenses. The court found also there was no dispute that the amount the Company received from its consumers was equal to or in excess of the amount the Company paid the City under the utilities tax ordinance.

It will be useful in considering the problem presented to review briefly certain rules of construction. We observe that the same rules which govern the construction of statutes are to be applied in construing municipal ordinances. (*Village of Park Forest v. Wojciechowski,* 29 Ill. 2d 435; *Dean Milk Co. v. City of Chicago,* 385 Ill. 565.) The primary purpose of the construction of ordinances is to determine the intent of the lawmaking body as revealed by the language used. (*Reitman v. Village of River Forest,* 9 Ill. 2d 448; *City of Nameoki v. City of Granite City,* 408 Ill. 33.) And a construction leading to an absurd result will be avoided, if possible. (*Harrison v. People ex rel. Boetter,* 195 Ill. 466; *People ex rel. Barrett v. Thillens,* 400 Ill. 224.) Whenever a word or phrase used in an ordinance

becomes an issue in a legal proceeding its strict meaning is not as important as the sense in which it was used by the lawmaking body, (*Jennings v. Calumet National Bank,* 348 Ill. 108; *Du Bois v. Gibbons,* 2 Ill. 2d 392) and "A statute or ordinance must receive a sensible construction, even though such construction qualifies the universality of its language." *City of Elmhurst v. Buettgen,* 394 Ill. 248, 253.

We deem that the only reasonable interpretation to be made of the two ordinances in conjunction requires that the Company's liability under the franchise ordinance be determined under the terms of such ordinance without regard to any payments the Company may have advanced to the City from its consumers under the utility tax ordinance.

On a literal and superficial view it might appear as if the utility tax ordinance imposed a tax burden upon the Company, but on examination it is evident that the burden was placed on the consumers. The Company as authorized simply passed on the new charges to its consumers and the consumers not only paid such charges to the City but also paid the Company the expenses it incurred while serving as a collector or conduit of taxes from the consumers to the City. Adoption of the Company's argument would give it the best of possible worlds. Its reasoning would permit the Company to have its consumers pay the burdens of the utility tax ordinance without the Company's incurring any real liability, and at the same time the Company would be able to relieve itself of its real and defined liabilities under the franchise ordinance by setting off payments made by its consumers under the utility tax ordinance. If we accept the Company's position that the utility tax ordinance really imposed a tax on the Company in the usual sense, then such imposition incongruously would terminate (as to the years here concerned, at least) the Company's liabilities under the franchise ordinance, increase its profits and reduce its expenses while increasing the costs of its consumers.

Plainly, such a construction would be unreasonable. The Company cannot plead that it has the burden of the utility tax and then pass it on to its consumers and in the same voice relieve itself of its obligations under the franchise ordinance by pleading tax payments under the utility tax ordinance which were not made by it.

It is manifest to us that when the City and Company entered into the franchise contract by means of the franchise ordinance the parties did not intend that payments which might be received by the City from the Company's consumers, (as here under the utility tax ordinance), should be deemed taxes paid by the Company within the meaning of the franchise ordinance so as to permit their being set off against the determined liabilities of the Company under the franchise contract.

The legislature in authorizing the imposition of additional charges by municipalities through ordinances such as the utility tax ordinance here did not contemplate that an enacting municipality would thereby be decreasing other revenues, unless the municipality so intended, for the authorizing statute provides that any new tax thereunder "* * * may be in addition to the payment of money, or value of products or services furnished to the municipality * * *." (Ill. Rev. Stat. 1965, chap. 24, par. 8—11—2.) The City certainly intended that revenues received under the utility tax ordinance were to be independent of other revenue sources, as section 3 of such ordinance provides: "Such tax shall be in addition to the payment of money, or value of products or services furnished to this municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon, or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayers' business."

Too, section 6 of the ordinance declares: "The city has immediate need for the revenue to be produced by the tax

imposed by this ordinance in order to meet the cost of providing services necessary for the immediate preservation of the public peace, health and safety, and this ordinance is passed as an urgent measure." It is obvious the City did not contemplate that by enacting the ordinance it would be affecting disadvantageously its source of revenue under the franchise ordinance by reducing the Company's obligations.

It is apparent from what we have said that we deem that the argument of the Company that the utility tax ordinance unconstitutionally impairs the obligation of contract between it and the City is without merit. The franchise contract and the rights and obligations thereunder, are not altered, amended or impaired by the utility tax ordinance. Under the tax ordinance the consumers paid the taxes and the Company was but a conduit for the transmittal of moneys to the City. Its consumers paid the Company its costs of transmitting the funds. The Company so far as the franchise contract was concerned remains in the same position it occupied prior to the enactment of the utility tax ordinance. Where the *status quo* of the contractual relationship is undisturbed it cannot be plausibly said that there has been any impairment of contract.

The cases relied on by the Company in this argument are factually distinguishable from those of this case. In *Village of West City v. Illinois Commercial Telephone Co.*, 372 Ill. 493, the village passed an ordinance on May 7, 1912, which granted the phone company the right to construct a telephone system in the village. The company was to furnish in return certain nonfinancial considerations to the village. On March 7, 1938, the municipality adopted a resolution which purported to repeal the franchise ordinance and to levy a one-dollar annual rental against each of the company's poles in excess of a designated height as compensation for the use of village property occupied

by each pole. The issue in this case was whether the 1912 ordinance was a contract or only a license revocable at will. The court held that it was a contract which could not be varied by one of the parties. Further, the court held that the consideration given precluded the village from later demanding another and different consideration. Here, there has been no such attempt by the City to vary the terms of a contract by a later ordinance which seeks to repeal the earlier contract ordinance and exact a consideration different from the consideration called for in the earlier ordinance. Enforcement of the utility tax ordinance here does not change the Company's financial obligations under the franchise ordinance.

City of Springfield v. Inter-State Independent Telephone and Telegraph Co., 279 Ill. 324, and *City of Springfield v. Springfield Consolidated Railway Co.*, 208 Ill. App. 11, also involved ordinances which sought to impose rental charges for the use of municipal property which would have been in addition to the considerations called for by the franchise contracts concerned. The cases are not pertinent here.

The judgment of the circuit court of St. Clair County is affirmed.

Judgment affirmed.

APPENDIX B.

ORDER OF CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS ENTERED SEPTEMBER 14, 1965.

The City of East St. Louis, Illinois, filed a complaint for declaratory judgment seeking a declaration of rights as between it and the defendant, Union Electric Company, under the terms and conditions of an Ordinance No. 3193 adopted in 1958 granting authority to the defendant to construct and operate an electrical distribution system in the City and under the terms of which franchise ordinance the defendant was obliged to make payment in accordance with a schedule incorporated as part of the ordinance.

The defendant contends that the payments under the franchise ordinance are not due because the plaintiff adopted a Utilities Tax Ordinance. The issues drawn between the pleadings are the defendant contends that upon the adoption of the Utilities Tax Ordinance by the City of East St. Louis, Illinois, known as Ordinance No. 3698 in June, 1960, the franchise tax under the terms of the franchise agreement ordinance was no longer payable. It relies upon a clause in the franchise agreement which has been introduced into evidence. The amount due under the Franchise Ordinance is a percentage up to a certain amount of the gross sales which percentage decreases as the sales increase but it is stated that this amount shall only be paid if it shall exceed the aggregate amount of all payments made by the defendant for and on account of permit and inspection fees or any other fees, licenses, charges, taxes or exactions of whatsoever kind. The issue: the defendant claims that under the provision of this franchise agreement and ordinance, the Utilities Tax Ordinance comes within the terms and meanings of the word "taxes" as used in Section 6, Paragraph

B of the franchise agreement. The plaintiff contends that under the terms of Chapter 111⅔, Section 36, Illinois Revised Statutes, 1963, a utility which comes under a utilities tax by a municipality's adoption of an ordinance may in addition to any rate authorized by the public utilities act charge its customers an additional amount equal to the sum of: "an amount equal to such municipal tax, 3% of such tax or any part thereof to cover the cost of accounting and an amount equal to the increase in taxes and other payments to governmental bodies resulting from the amount of such additional charge."

There is no dispute that the defendant did levy the additional charge to its customers as it was permitted to do under the terms of the Illinois Revised Statutes of 1961, Chapter 111⅔, Section 36. There is no dispute that the utilities tax is passed on to its customers by the defendant and that the additional charge it makes to the customers is sufficient to cover all costs of accounting and the amount derived from its customers is equal to or in excess of the amount it pays to the City under the terms of the Utilities Tax Ordinance No. 3698.

The court having heard the arguments of counsel and having reviewed the stipulation of facts which was entered into and having examined the documentary evidence herewith makes a declaration of the following rights and duties under the terms of the Franchise Ordinance No. 3193 and the Utilities Tax Ordinance No. 3698:

1. It has jurisdiction of the subject matter and the parties hereto.

2. That the defendant is a corporation duly organized and existing under the state of Missouri and authorized to conduct and engage in business in the State of Illinois and prior to and since November 30, 1948, has been engaged in the business of furnishing electric service in the City of East St. Louis, Illinois.

3. On November 30, 1948, Ordinance No. 3193, the Franchise Ordinance, was adopted by the City Council of the City of East St. Louis, and acepted by the defendants. Under the terms of this ordinance the defendant is not relieved of its obligation to make its payments to the City by the City adoption of Ordinance No. 3698, commonly known as the Utilities Tax Ordinance, because of the intent of the parties and the wording and phrasing of the Franchise Ordinance, the amount of money collected by the defendant pursuant to Ordinance 3698, does not constitute a tax or taxes within the meaning of Section 6, Paragraph B of the Franchise Ordinance. This is based on the action of the defendant in levying the additional charge pursuant to Chapter 111⅔, Section 36 of the Illinois Revised Statutes 1963, which permits the defendant to collect the tax under the terms of Ordinance 3193, the Franchise Ordinance, for the entire term of the Franchise Agreement, and the defendant is obliged to make the payments to the plaintiff in accordance with the terms and conditions of Ordinance 3193, notwithstanding the adoption of Ordinance No. 3698 by the plaintiff.

Richard T. Carter,
Judge.

Dated this 14th day of September, 1965, A. D.

APPENDIX C.

STIPULATION OF FACTS FILED IN CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS, FEBRUARY 5, 1965.

It Is Stipulated by and between the City of East St. Louis, plaintiff, and Union Electric Company, a Corporation, defendant, as follows:

1. The City of East St. Louis, is located in St. Clair County, Illinois, is a municipal corporation organized and existing under the Illinois Municipal Code, and operating with the Commission form of government.

2. Union Electric Company is a corporation duly organized and existing under the laws of the State of Missouri, is duly authorized to conduct and engage in business in the State of Illinois and is the successor to Union Electric Power Company, a Corporation.

3. Prior to November 30, 1948, and continuously since that date, Union Electric Company or its predecessors have and Union Electric Company now is engaged in the business of furnishing electric service in the City of East St. Louis. Union Electric Company had and continues to have, the right to engage in such business in the City of East St. Louis and was granted, had and continues to have the right to occupy public property in connection therewith, by ordinances enacted by the City of East St. Louis and the provisions, terms and conditions of which were duly accepted by Union Electric Company and its predecessors.

4. A true copy of Ordinance No. 3193 passed by the City Council of the City of East St. Louis on November 30, 1948, and approved on November 30, 1948, is attached hereto as "Exhibit A" to this stipulation. Union Electric Power Company accepted the provisions, terms and con-

ditions of Ordinance No. 3193 and a true and correct copy of such acceptance, dated December 2, 1948, is attached to and made a part of "Exhibit A." Subsequent to the enactment and acceptance of Ordinance No. 3193 the name of Union Electric Power Company was changed to Union Electric Company.

5. Union Electric Company has, since the enactment and acceptance of Ordinance No. 3193, utilized the right, franchise, permission and authority granted by and has assumed and discharged, and continues to assume and discharge, the obligations imposed by the terms and provisions of Ordinance No. 3193.

6. Union Electric Company paid the City of East St. Louis $18,500.00 within the time specified by Section 6 (A) of Ordinance No. 3193, and the further sum of $25,000.00 on or before March 1, 1949, as required by the provisions of Sections 6 (B) and (C) of Ordinance No. 3193. In addition, for each of the calendar years 1950 to 1959, both inclusive, Union Electric Company paid the City of East St. Louis the full amount due the City of East St. Louis for each of such calendar years under the terms and provisions of Sections 6 (B), (a) and (b) of Ordinance No. 3193 and within the times specified by Section 6 (C) of such ordinance.

7. A true and correct copy of Ordinance No. 3698 passed, signed and recorded by the City Council of the City of East St. Louis on June 15, 1960, is attached hereto as "Exhibit B" to this stipulation.

8. Since August 1, 1960, the effective date of Ordinance No. 3698, Union Electric Company, has paid the full amount of the tax imposed upon it by the terms and provisions of Ordinance No. 3698 within the time specified in such ordinance.

9. The tax imposed upon and paid by Union Electric Company to the City of East St. Louis under the terms

and provisions of Ordinance No. 3698 for the calendar years 1960, 1961, 1962, 1963, and 1964 has, in each of such years, exceeded the total of the percentages of gross revenue, as determined under the terms and provisions of Ordinance No. 3193 and Sections 6 (B) and (a) thereof, and received by Union Electric in each of such years from the sale of electric energy for use in the City of East St. Louis.

10. Union Electric Company has paid no amount of money to the City of East St. Louis under the provisions of Section 6 of Ordinance No. 3193 for the calendar years 1960, 1961, 1962, 1963 and 1964.

11. The Court may consider the stipulation and "Exhibits A and B" thereto, together with the pleadings filed by plaintiff and defendant, and such other evidence, if any, which the parties, or either of them, may offer, in reaching a determination of the issues in this litigation.

Robert F. Godfrey,
Thomas A. Matthews,
Attorneys for Plaintiff.

Pope and Driemeyer,
By Robert Broderick,
Attorneys for Defendant.

"Exhibit A".

Ordinance No. 3193.

An Ordinance Granting to Union Electric Power Company, Its Successors and Assigns, the Right to Construct, Maintain and Operate an Electric Distribution and Transmission System in the Streets, Alleys, and All Other Public Places in the City of East St. Louis, and Repealing Section 6 of Ordinance No. 1546 of the City of East St. Louis, Passed on January 11, 1909, and Approved on January 12, 1909.

Be It Ordained by the City Council of the City of East St. Louis, in the State of Illinois:

Section 1. In consideration of the payments hereinafter provided to be made to the City of East St. Louis, St. Clair County, Illinois, hereinafter called the "City", by Union Electric Power Company, a corporation organized and existing under and by virtue of the laws of Illinois, its successors and assigns, hereinafter called the "Company", full right, franchise, permission and authority is hereby granted and given to the Company to construct, reconstruct, excavate for, place, repair, maintain, operate and use all necessary or appropriate poles, towers, conduits, wires, cables, conductors and other equipment and apparatus, and all necessary or appropriate appurtenances and appliances in connection therewith, in, upon, along, over and under, through and across all present and future streets, alleys, highways, sidewalks, bridges, subways, viaducts, public property and public places within the corporate limits of the City of East St. Louis, as now existing and as hereafter extended, for the purpose of furnishing and distributing electricity for light, heat, power and other purposes for public and private use within the City of East St. Louis and in territory adjacent thereto, and for the purpose of transmitting electricity through said

City, for a period beginning with the effective date of this ordinance and ending on the 31st day of December, 1979, subject, however, to the right of the City to control the use, improvement and repair of the streets, alleys and other public places within said City, and to make and enforce all reasonable and lawful police regulations concerning the placing and operating of such poles, towers, conduits, wires, cables, conductors and other equipment, apparatus, appurtenances and appliances.

Section 2. All such poles, wires, conduits, cables, conductors and other equipment and apparatus shall be constructed and maintained in conformity with construction rules and standards promulgated by the Illinois Commerce Commission or other governmental regulatory authority having jurisdiction of the subject.

Section 3. Company shall indemnify, save and keep harmless the City from any and all damage and injury which the City may sustain by reason of any acts of negligence of the Company or any of its employees while engaged in and about the business of the Company.

Section 4. The charge for energy consumed by the consumers within the City shall be in conformity with the schedules of rates filed from time to time by the Company with the Illinois Commerce Commission of the State of Illinois.

Section 5. The City shall have the right to string necessary wires upon the poles of the Company for the purpose of installing a system of police and fire alarm signals without charge for the use thereof. Such installation on Company poles shall first be approved in writing by the Company and constructed and maintained by the City in conformity with rules and standards described in Section 2 of this ordinance.

Section 6. As the sole and exclusive consideration for the rights, franchise, permission and authority hereby granted, the Company shall pay to the City:

(A) The amount of $18,500.00 within 5 days after this ordinance shall become legally effective in accordance with the laws of the State of Illinois.

(B) For the calendar year 1949 the amount of $25,000.00, and for each calendar year thereafter, to and including the calendar year 1979, an amount, if any, by which:

(a) an amount which shall be the total of 2% of the gross revenue up to but not in excess of $500,000.00 from the sale by Company in the preceding calendar year to all customers in the City of East St. Louis (except the City of East St. Louis and other municipalities, political subdivisions and municipal or governmental agencies) of electric energy for use in the City of East St. Louis; 1½% on the gross revenue from all such sales in excess of $500,000.00 and up to but not in excess of $1,000,000.00; 1% on the gross revenue from all such sales in excess of $1,000,000.00 and up to but not in excess of $1,500,000.00, and ½% on the gross revenue from all such sales in excess of $1,500,000.00,

shall exceed

(b) the aggregate amount of all payments made by Company to the City of East St. Louis, or which accrued and for which Company became liable, during the preceding calendar year, for or on account of permit and inspection fees, or any other fees, licenses, charges, taxes or other exactions of whatsoever kind or character not in derogation of the rights, franchise, permission

and authority hereby granted (except general taxes on tangible property) imposed by any valid ordinance of the City of East St. Louis.

(C) The payments to be made for the year 1949 and subsequent years shall be made on or before March 1st of each said year.

Section 7. Section 6 of Ordinance No. 1546 of the City of East St. Louis entitled "An Ordinance authorizing the Consumers Light, Heat and Power Company to furnish electricity for lighting, heating and power purposes to consumers in the City of East St. Louis and to make excavations and to erect poles in certain streets and alleys and to place in the said excavations conduits, cables, pipes and other necessary instruments and appliances, to string wires on said poles, as well as on the poles and in the conduits of other companies doing business in the City of East St. Louis, by agreement of said companies and to acquire by purchase, lease or otherwise conduits, cables, pipes and conveyances of other companies doing business in said City and to operate the same," is hereby repealed, but, except as to the provisions of said Section 6 thereof, said ordinance shall remain in full force and effect in accordance with the terms and provisions thereof.

Section 8. The rights, franchise, permission and authority granted by this ordinance are and are intended to be in addition to any and all rights, franchise, permission and authority the Company now has to construct, maintain and operate an electric distribution and transmission system in the streets, alleys, and all other public places in the City of East St. Louis, and not in derogation thereof or substitution therefor.

Section 9. This ordinance shall remain on file with the City Clerk for public inspection, in the form in which it is finally passed, at least one week before

the final passage thereof, and shall be in full force and effect from and after thirty days after its final passage and approval in manner and form as required by the statute in such case made and provided. Within thirty days after the final passage of this ordinance, the Company shall file with the City Clerk of the City of East St. Louis its acceptance in writing of the provisions, terms and conditions of this ordinance, and thereupon this ordinance and the rights, franchise, permission and authority hereby granted, and the acceptance thereof by the Company, shall constitute and be effective as a contract until December 31, 1979.

Introduced and read November 23, 1948.

Filed with the City Clerk for public inspection, November 23, 1948.

Passed November 30, 1948.
Approved November 30, 1948.
Published December .., 1948.

John T. Connors,
Mayor.

Russell T. Beebe,
John D. English,
Alvin G. Fields,
Joe W. Ganschinietz,
Commissioners.

Attest:

John Tierney,
City Clerk.

City Clerk's Certificate.

State of Illinois,
St. Clair County,
City of East St. Louis.

I, D. P. O'Brien, City Clerk of the City of East St. Louis, Illinois, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 3698 passed by City Council of East St. Louis, St. Clair County, Illinois, at regular meeting held on Wednesday, June 15, 1960, at ten o'clock by the following "aye" and "nay" vote:

Aye. Commissioner Russell T. Beebe, Mayor Alvin G. Fields, Commissioners Dan Foley, Ed. Lehman.

Nay. None.

Absent. Commissioner Robert J. Keeley.

And I further certify that the original Ordinance of which the foregoing is a certified copy, is by law intrusted to my custody for safe keeping, and is on file in my office.

Witness my hand and the corporate seal of said city, this 20 day of June A. D. 1960.

D. P. O'Brien,
City Clerk of East St. Louis, Illinois.

Acceptance.

The provisions, terms and conditions of Ordinance No. 3193, entitled:

"An Ordinance Granting to Union Electric Power Company, Its Successors and Assigns, the Right to Construct, Maintain and Operate an Electric Distribution and Transmission System in the Streets,

Alleys, and All Other Public Places in the City of East St. Louis, and Repealing Section 6 of Ordinance No. 1546 of the City of East St. Louis, Passed on January 11, 1909, and Approved on January 12, 1909", passed by the City Council of the City of East St. Louis on the 30th day of November, 1948, and approved on the 30th day of November, 1948, are hereby accepted, and Union Electric Power Company hereby agrees to all of the provisions, terms and conditions thereof.

Dated at St. Louis, Missouri, this 2nd day of December, A. D. 1948.

Union Electric Power Company,
By John A Woodbridge,
Vice President.

Attest: E. J. Shapiro,
Secretary.

"Exhibit B".

Ordinance No. 3698.
Municipal Utility Tax.

Be It Ordained by the City Council of the City of East St. Louis, Illinois, That:

Section 1. A tax is imposed on all persons engaged in the following occupations or privileges:

a. Persons engaged in the business of transmitting messages by means of electricity, at the rate of 4.48% of the gross receipts from such business originating within the corporate limits of the City of East St. Louis, Illinois.

b. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the City of

East St. Louis, Illinois, and not for resale, at the rate of 4.48% of the gross receipts therefrom.

c. Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the City of East St. Louis, Illinois, and not for resale, at the rate of 4.48% of the gross receipts therefrom.

d. Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the City of East St. Louis, Illinois, and not for resale, at the rate of 4.48% of the gross receipts therefrom.

Section 2. No tax is imposed by this ordinance with respect to any transaction in interstate commerce or otherwise to the extent to which said business may not, under the constitution and statutes of the United States, be made subject to taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling gas, water, or electricity, or engaged in the business of transmitting messages be subject to taxation under the provisions of this ordinance for such transactions as are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 23-111 of the "Revised Cities and Villages Act," approved August 15, 1941, as amended.

Section 3. Such tax shall be in addition to the payment of money, or value of products or services furnished to this municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon, or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayers' business.

Section 4. For the purpose of this Ordinance the following definitions shall apply:

a. "Gross receipts" means the consideration received for the transmission of messages excluding the consideration received in coin operated telephones, for messages originating at coin operated telephones, and further excluding all consideration received for the transmission of long distance telephone messages where a separate charge is made for each individual long distance telephone message or telephone conversation, or the distributing, supplying, furnishing, or selling gas, electricity, or water for use or consumption and not for resale, as the case may be; and for all services rendered in connection therewith valued in money; whether received in money or otherwise, including cash, credit, service and property of every kind and material and for all services rendered therewith, and shall be determined without any deduction on account of the cost of transmitting said messages without any deduction on account of the cost of the service, product or commodity supplied, the cost of the materials used, labor or service cost, or any other expenses whatsoever.

b. "Transmitting messages," in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons, for the transmission of messages.

c. "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of the State, or a receiver, trustee, conservator or other representative appointed by order of any court.

Section 5. This ordinance shall take effect after publication and the tax provided for herein shall be based on the gross receipts, as herein defined, actually paid to the taxpayer for services rendered on or after the 1st day of August, 1960.

Section 6. The city has immediate need for the revenue to be produced by the tax imposed by this ordinance in order to meet the cost of providing services necessary for the immediate preservation of the public peace, health and safety, and this ordinance is passed as an urgent measure.

Section 7. On or before the last day of November, 1960, each taxpayer shall make a return to the City Treasurer for the months of August and September, 1960, stating:

1. His name;
2. His principal place of business;
3. His gross receipts during those months upon the basis of which the tax is imposed;
4. Amount of tax;
5. Such other reasonable and related information as the corporate authorities may require.

On or before the last day of every third month, thereafter, each taxpayer shall make a like return to the City Treasurer for the preceding Calendar Quarter.

The Taxpayer making the return herein provided for shall, at the time of making such return, pay to the City Treasurer, the amount of tax herein imposed; provided that in connection with any return the taxpayer may, if he so elects, report and pay an amount based upon his

total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings and the taxable gross receipts.

Section 8. If it shall appear that an amount of tax has been paid which was not due under the provisions of this ordinance, whether as the result of a mistake of fact, or any error of law, then such amount shall be credited against any tax due, or to become due, under this ordinance from the taxpayer who made the erroneous payment provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefor shall be so credited.

Section 9. No action to recover any amount of tax due under the provisions of this ordinance shall be commenced more than three (3) years after the due date of such amount.

Section 10. Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this ordinance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars ($100.00) nor more than two hundred dollars ($200.00) and in addition shall be liable in a civil action for the amount of tax due.

Section 11. Ordinance No. 3696 and all other ordinances in conflict with this are hereby repealed.

This ordinance shall take effect on the first day of August, 1960, following its passage.
Filed June 8, 1960.

Alvin G. Fields,
Mayor.

Signed June 15, 1960.
Passed June 15, 1960.
Recorded June 15, 1960.
Published June 17, 1960.